

CHAPTER 1018
MUNICIPAL GOVERNMENT TORT LIABILITY
S.F. 474

AN ACT relating to the tort liability of governmental subdivisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Chapter 613A, Code 1981, is amended by adding the following new section:

NEW SECTION. OFFICERS AND EMPLOYEES. All officers and employees of municipalities are not personally liable for any claim which is exempted under section 613A.4, except a claim for punitive damages, and actions permitted under section 85.20. An officer or employee of a municipality is not liable for punitive damages as a result of acts in the performance of a law enforcement or emergency duty, unless actual malice or recklessness is proven.

Sec. 2. Chapter 613A, Code 1981, is amended by adding the following new section:

NEW SECTION. DEFAULT JUDGMENTS. A default judgment shall not be taken against an employee, officer, or agent of a municipality unless the municipality is a party to the action and the time for special appearance, motion or answer by the municipality under rule 53 of the rules of civil procedure has expired.

Sec. 3. Section 613A.2, unnumbered paragraphs 1 and 2, Code 1981, are amended to read as follows:

Except as otherwise provided in this chapter, every municipality is subject to liability for its torts and those of its officers, ~~and employees, and agents~~ acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

~~A tort shall be deemed to be within the scope of employment or duties if the act or omission reasonably relates to the business or affairs of the municipality and the officer, employee, or agent acted in good faith and in a manner a reasonable person would have believed to be in and not opposed to the best interests of the municipality.~~

Sec. 4. Section 613A.4, subsection 3, Code 1981, is amended to read as follows:

3. Any claim based upon an act or omission of an officer or employee of the municipality, exercising due care, in the execution of a statute, ordinance, ~~or officially adopted resolution, rule, or regulation of a governing body whether the statute, ordinance or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the municipality or an officer or employee of the municipality.~~

Sec. 5. Section 613A.4, Code 1981, is amended by adding the following new subsections:

NEW SUBSECTION. 5. Any claim for punitive damages.

NEW SUBSECTION. 6. Any claim for damages caused by a municipality's failure to discover a latent defect in the course of an inspection.

Sec. 6. Section 613A.8, Code 1981, is amended to read as follows:

613A.8 OFFICERS AND EMPLOYEES DEFENDED. The governing body shall defend any of its officers, ~~and employees and agents~~, whether elected or appointed and, ~~except in cases of malfeasance in office, willful and unauthorized injury to persons or property, or willful or wanton neglect of duty~~, shall save harmless and indemnify such officers, ~~and employees and agents~~ against any tort claim or demand, whether groundless or otherwise, arising out of an

alleged act or omission occurring within the scope of their employment or duties. However, the duty to save harmless and indemnify shall not apply to awards for punitive damages. The duty to save harmless and indemnify shall not apply and the municipality shall be entitled to restitution by an officer or employee if, in an action commenced by the municipality against the officer or employee, it is determined that the conduct of the officer or employee upon which the tort claim or demand was based constituted a willful and wanton act or omission. Any independent or autonomous board or commission of a municipality having authority to disburse funds for a particular municipal function without approval of the governing body shall similarly defend, save harmless and indemnify its officers, and employees and agents against such tort claims or demands.

The duty duties to defend, and to save harmless, and indemnify shall apply whether or not the municipality is a party to the action and shall include but not be limited to cases arising under title 42 United States Code section 1983.

In the event the officer or employee fails to cooperate in the defense against the claim or demand, the municipality shall have a right of indemnification against that officer or employee.

Approved March 2, 1982

CHAPTER 1019

SALES AND USE TAX ON TRANSACTIONS INVOLVING TRADED PROPERTY

S.F. 574

AN ACT relating to the calculation of the sales, services, and use tax on transactions involving the trade-in of tangible personal property.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 422.42, subsection 6, paragraph b, Code 1981, is amended by striking the paragraph and inserting in lieu thereof the following:

b. That in transactions in which tangible personal property is traded toward the purchase price of other tangible personal property the gross receipts are only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

(1) The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer's business.

(2) The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail and will be subject to the tax under section 422.43 when sold.

Sec. 2. Section 423.1, subsection 3, Code 1981, is amended by striking the subsection and inserting in lieu thereof the following:

3. "Purchase price" means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise; provided:

a. That cash discounts taken on sales are not included.

b. That in transactions, except those subject to paragraph c, in which tangible personal property is traded toward the purchase price of other tangible personal property the purchase